IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 35 of 2002
in
SPECIAL CIVIL APPLICATION No 4594 of 2001
with
CIVIL APPLICATION No 696 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

NILESH BHOGILAL DAVE
Versus
TIKOO TRADERS PVT LTD

Appearance:
1. LETTERS PATENT APPEAL No. 35 of 2002
MR AR LAKHIA for Appellant No. 1
..... for Respondents No. 1-2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 29/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. The factual profile, the observations of the Labour Court and the remarks repeated in the impugned judgment, dated 27.6.2001, of the learned single Judge in Special Civil Application No.4594 of 2001, and the entire landscape of facts and circumstances emerging from the record of the case with regard to the conduct, manner and mode in which the evidence is sought to be employed by the appellant herein-original petitioner-workman, have not only startled us but, unfortunately, have shattered and tremored our conscience.

2. The appellant, invoking the aids of Clause 15 of the Letters Patent, in this appeal, has questioned the legality and validity of the judgment, dated 27.6.2001, of the learned single Judge, whereby, the award of the Labour Court in Reference (LCA) No.220 of 1996 passed on 10.4.2001 rejecting the reference, and has, inter alia, reiterated what was placed before the Labour Court and what was repeated before the learned single Judge.

3. The appellant-original petitioner came to be appointed on probation for a period of six months as a Civil Engineer with respondent No.1 by an order of appointment, dated 3.3.1995, and his probation period of six months expired on 5.9.1995. The appellant is hereinafter referred as `the workman' for the sake of convenience and brevity and the respondent as `the employer'.

4. The workman desired for reference as his employment, after probation, came to be terminated and pursuant to the reference, the Labour Court adjudicated upon the industrial dispute raised by the workman in the reference by its award, dated 10.4.2001, holding that the workman had failed to prove the case and the reference being meritless came to be rejected.

5. Before the Labour Court in reference of the industrial dispute, a statement of demand was produced at Exh.4. As per the case of the workman, he was entitled to continue in the employment with the employer as he was allowed to work even beyond the period of probation and, therefore, either there was a deemed confirmation or he was given oral confirmation by the employer. The proposition advanced by the workman was questioned by the

employer before the Labour Court by filing exhaustive written statement, at Exh.8, wherein, inter-alia, it was espoused that the workman was appointed on the post of Civil Engineer for a span of six months on probation and on completion of the probation period, his services were dispensed with; and no oral confirmation was given and, therefore, there would not have any deemed confirmation on the employment as alleged by the workman. It is, therefore, the case of the employer from the inception that the workman was relieved from employment upon completion of the probation period of six months which commenced from 6.3.1995 and concluded on 5.9.1995. It was also pleaded that the case of the workman that he was allowed to continue to work beyond the period of probation till 12.9.1995 was an afterthought. Upon appreciation of the facts and circumstances and the evidence on record before the Labour Court, the impugned award came to be recorded against the workman, wherein, the claim of the workman of having become a confirmed workman after the period of probation was disbelieved and the conduct of the workman and the manner and mode in which some documentary evidence was introduced during the course of cross-examination of the employer was subjected to serious criticism.

6. Being aggrieved and dissatisfied by the award of the Labour Court, the workman filed Special Civil Application No.4594 of 2001 before this Court by invoking extraordinary, plenary, discretionary, equitable constitutional writ remedy under Articles 226 and 227 of the Constitution. As we have observed earlier, almost all the points which were raised before the Labour Court were repeatedly raised before the learned single Judge at the time of admission and the learned single Judge, agreeing with the views and observations of the Labour Court, summarily dismissed the writ petition, and that is how the workman is prompted to invoke Clause 15 of the Letters Patent by filing this appeal questioning and challenging the summary dismissal of the writ petition.

7. The learned advocate Mr.Lakhia for the appellant-original petitioner-workman, in his marathon submissions, again reiterated all the pleas and submissions, but he has not been successful in convincing us that the impugned judgment of the learned single Judge was in any way vulnerable requiring our interference. It is a settled proposition of law that when the appellate Court, broadly, agrees with the reasons and ultimate conclusions recorded by the court below, it would not be incumbent upon the appellate Court to meticulously and elaborately advert to all the repeated pleas and

submissions. However, since we are addressed at the admission stage at a great length and on some points repeatedly, we would like to deal with the important aspects of the claims made by the workman unsuccessfully before the Labour Court, as well as, before the learned single Judge of this Court:

(i) The contention that the workman was allowed to work beyond the period of probation, which commenced on 6.3.1995 and concluded on 5.9.1995, till 12.9.1995, is rightly held to be untrue by the Labour Court as well as by the learned single Judge of this Court. Nothing has been successfully pointed out from the record of the present case which would even remotely prompt us to make a departure from the views and observations of the Labour Court in the award and the impugned judgment of the learned single Judge. On the contrary, this contention runs diametrically opposite to the averments made in the statement of claim. It is an admitted fact that the documentary evidence, which is the basis of the entire claim made by the workman, has not been mentioned in the statement of claim. Ordinarily, such an important document or basis of the claim would find manifestation in the statement of claim. No plausible, acceptable or convincing reason is assigned as to why the basis of the claim and a documentary evidence which was in possession of the workman, did not find even a mention in the statement of claim. Not only that, why was it not even produced in the course of the evidence of the workman before the Labour Court. Therefore, the views and observations of the Labour Court, confirmed by the learned single Judge in the impugned judgment, regarding the behaviour and conduct and about such documentary evidence, which was produced after the closing of the evidence of the workman and with which the witness of the employer was confronted in course of cross-examination, were rightly made and they are required to be confirmed and affirmed.

(ii) As regards the plea that the workman was discharged or terminated from the employment in breach of the terms and conditions of the service, we have been taken through all the terms and conditions mentioned in the appointment order, dated 3.3.1995, issued by the employer and accepted by the workman. We are, also, taken through the entire evidence at the admission stage by learned advocate Mr.Lakhia. We have, also, carefully scanned and scrutinised the evidence relied upon by him. We do not find any substance in the contention that the termination of service of the workman was in violation of any of the conditions mentioned in the appointment letter

dated 3.3.1995. The finding of the Labour Court that there was no breach of any of the terms and conditions of service which was confirmed by the learned single Judge is required to be affirmed by us.

(iii) In support of the plea that even if no case of confirmation after the period of probation was established, there would be confirmation by deeming fiction, a decision of the Hon'ble Supreme Court in WASIM BEG v. STATE OF U.P. reported in 1998 (78) F.L.R. 910 (SC) is relied upon by learned advocate Mr.Lakhia for the workman. We have gone through this decision. This decision is not at all applicable to the facts of the present case. The proposition of which is evolved and propounded by the Hon'ble Apex Court where and when expiry of the probation period would automatically result into confirmation. In other words, whether an employee at the end of probationary period automatically gets confirmed in the post or not would depend upon the provisions in the service rules. No service rules are pointed out in support of the pleas. Relying upon some decision, it was also contended that after the expiry of probationary period, if a workman continues in service beyond the maximum period of probation, there would be confirmation in the post. The proposition laid down in the said decision is not attracted to the facts of the present case. The deemed confirmation at the end of the maximum probationary period is highlighted and propounded, and that too, if it is not contrary to the service rules. As we have, already, discussed hereinabove, no service rules are pointed out or cited before us. Therefore, obviously, there would not arise the question of maximum period of probation. The period of probation of six months stated in the appointment order could not be said to have been extended in light of the facts of the present case. The consistent and concurrent finding of fact recorded by the Labour Court as well as by the learned single Judge of this Court is that there was no extension of the period of probation. Therefore, there was no service period beyond the period of probation stipulated in the appointment order. We are at great loss to comprehend as to why this decision is relied upon in the light of the factual landscape of the present case. In absence of any specific provision in the service rules or in the contract of service, the confirmation on the post could be only by clear and unambiguous express order of the employer. Therefore, even alternatively, the decision relied upon would not come to the rescue of the workman.

(iv) Again, strong reliance is placed on the decision

of the Supreme Court in the case of PRABHUDAYAL BIRARI v. M.P.RAJYA NAGRIK AAPURTI NIGAM LTD. reported in 2000 LAB I.C. 3133 (SC). The proposition of law which is evolved and propounded by the Apex Court in this decision is that the termination of service, even in case of a temporary employee, contrary to the terms of appointment would be void and illegal. This decision obviously would not be attracted in the facts of the present case. As observed by us hereinabove, there is no breach of terms and conditions of the appointment. Therefore, the learned advocate Mr.Lakhia is unable to make any capital out of the citations.

8. Before parting, we are unable to resist the temptation of mentioning even at the cost of repetition that the views and observations made by the Labour Court and approved by the learned single Judge about the conduct, belated production of so called documents, as referred hereinabove, by the workman-appellant are fully justified and we are fully satisfied about the same. Therefore, repeated criticism of such observations by learned advocate Mr.Lakhia was unwarranted, unacceptable and unsustainable. We seriously reject it and affirm and approve the views, observations and the ultimate conclusions recorded by the Labour Court and approved by the learned single Judge.

9. In the result, therefore, we are left with no alternative but to dismiss this Letters Patent Appeal at the threshold. Accordingly, it is dismissed summarily. Civil Application also shall stand dismissed.

Sd/-

(J.N.Bhatt, J.)

Sd/-

29.1.2002 (D.H.Waghela, J.)

(KMG Thilake)